

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 7 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

CENTRAL BUREAU OF INVESTIGATION

Versus

PRATAPRAI MAGANLAL NAKAR

Appearance:

1. Criminal Revision Application No. 7 of 2000
MR AMIT J SHAH for Petitioner No. 1
MR KETAN A DAVE for Respondent No. 1
MR YOGESH S LAKHANI for Respondents No. 2,9
Mr B D Desai, APP for the State

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 18/01/2002

ORAL JUDGEMENT

This Criminal Revision Application under section

397 of the Criminal Procedure Code, 1973 (for short, 'the Code') has been filed by the Central Bureau of Investigation against the aforesaid respondents. Out of them, respondents No.1 to 9 stood as accused before the learned Special Judge in the Special Court in Special Case No.4/93. The said respondents No. 1 to 9 submitted before the Court that though charge sheet has been filed against them, no offence is made out even on a bare reading of the charge sheet and police investigation papers attached to the charge sheet and, therefore, there is no prima case against the said respondents and, therefore, they may be discharged.

2. The said application of the said contesting respondents at Exh.8 before the Special Judge was contested by the present petitioner and after hearing, the learned Special Judge recorded an order that there was no prima facie case against the said respondents and therefore, they were ordered to be discharged from the said special case. It appears that in fact the said contesting respondents had filed three separate applications being Application Exhs. 5,6 and 8 for their discharge. However, as they stood accused in one case, a common order was passed by the learned Special Judge in respect of those applications at Exh. 5, 6 and 8. Accordingly, as said above, the learned Judge was pleased to find that the aforesaid respondents were not prima facie found guilty of any offence and, therefore, they were required to be discharged and accordingly the respondents were discharged.

3. Feeling aggrieved by the said order of the learned Special Judge dated 16.9.1999, the Central Bureau of Investigation (for short, 'CBI') has preferred this revision application before this Court. It has been contended before this Court that the Police Inspector of the CBI had undertaken investigation and during the investigation, it was found that respondent no.3 was running his business in the name and style of Kiran Screen Designers (respondent No.6 herein) at Rajkot, respondent No.4 was dealing with the business of screen prints in the name of Kumar Textiles (respondent no.7 herein) at Rajkot, respondent no.5 was running partnership firm as an active partner namely; Kirit Prints (respondent no.8 herein), respondent No.2 was running a proprietorship concern in the name and style of M/s J B Trading Company (respondent no.9 herein) at Rajkot. All the above firms were operating during the year 1989-90. It is further alleged that respondent no.1 herein was working as Manager of State Bank of Saurashtra, R K Nagar Branch at Rajkot and he entered

into a criminal conspiracy with the remaining respondents no.2 to 9 with an intention to cheat the State Bank of Saurashtra, R K Nagar Branch, Rajkot during the year 1989-90. That in furtherance of the said criminal conspiracy, respondent no.3 applied for a term loan of Rs.1.5 lakhs against the book debt of Rs.50,000/- to the State Bank of Saurashtra (for short, 'the Bank') and the said loan application dated 15.2.1990 was entertained by respondent no.1 and he being one of the members of the conspiracy, sanctioned Cash Credit facility in a sum of Rs.1.5 lakhs against the book debt of Rs.50,000/- on 16.3.1990. It is further alleged that respondent no.7 had submitted before respondent no.1 an application for loan on 16.3.1990 for a sum of Rs.1.5 lakhs against the book debt of Rs.50,000/- which was sanctioned by the first respondent. Similarly, a loan application of Kirit Prints (respondent no.8 herein) against a book debt of Rs.50,000/- which was also sanctioned for Rs.1.5 lakhs on 16.3.1990. In the same way, a loan application by respondent no.9 herein was also sanctioned for Rs.1.5 lakhs with overdraft limit of Rs.50,000/-.

4. The petitioner has contended that some formalities were required to be followed before sanctioning the loan. However, before sanctioning the loan, the required formalities were not followed with a view to cheat the bank by entering into a criminal conspiracy between respondents no.1 to 9. That therefore, all the respondents no.1 to 9 are responsible and liable for the aforesaid offence and, therefore, there was a prima facie case against the contesting respondents no.1 to 9 for offence punishable under sections 420, 407, 120-B of IPC as well as for offence punishable under section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. Since there was prima facie case against these respondents, the trial court was required to proceed ahead with the said trial against the said respondents in accordance with law. That despite the said position, the learned Judge discharged the said respondents and, therefore, the said order is illegal and perverse and deserves to be quashed and set aside. It is, therefore, prayed by the petitioner herein to quash and set aside the aforesaid order of the learned Special Judge for a direction to the learned Judge to proceed against the contesting respondents in accordance with law.

5. On receiving the revision application. rule was issued. Mr Ketan A Dave, learned Advocate appears for respondent No.1, Mr Y S Lakhani, learned Advocate appears for the remaining respondents No.2 to 8 and Mr B D Desai

learned APP appears for the State.

6. I have heard the learned Advocates for the parties and have perused the papers. In fact, learned Advocate for the revision petitioner has taken me through the order of the learned Special Judge. He has also taken me through many documents in order to show that there was prima facie case against the contesting respondents and, therefore, the learned Judge ought not to have discharged the contesting respondents.

7. It has been mainly contended on behalf of the petitioner that the entire process adopted by the first respondent in sanctioning loan to the remaining respondents No.2 to 9 was quite illegal, improper and not warranted by the procedure to be followed for sanctioning the loan. It has also been contended that there are as many as 17 witnesses cited by the prosecution for being examined at the trial for the purpose of proving the case against the respondents. It is also submitted that more than 80 documents have been produced with a view to prove the case against the respondents. That all those materials are looked into collectively, then there is clear prima facie case against the contesting respondents No. 1 to 9.

8. In order to substantiate the said argument, learned Advocate for the petitioner has submitted that there is no dispute that the first respondent was the Branch Manager of State Bank of Saurashtra at the relevant point of time. Even the contesting respondent had not disputed this aspect of the case. Therefore, this factual aspect cannot be disputed.

9. Now, so far as the procedural aspects are concerned, it has been contended that by and large the procedure has been given a go-bye and it was done with a view to play a role as part of criminal conspiracy between the contesting respondents. In order to show the criminal conspiracy between respondent No.1 and other respondents No.2 to 9, it has been contended during the course of argument that the aforesaid firms were not registered and they were not in existence and yet loan was sanctioned to the aforesaid partnership firms. During the course of investigation, it has been revealed that all these firms are having their telephone numbers. They are having their Sales Tax numbers and they have been duly registered in accordance with the provisions made in the Indian Partnership Act. It has been argued that separate boards were not displayed to indicate as to which firm was working at what place. It is also

submitted that all the aforesaid so-called firms were found to be functioning at one premises only.

10. Now simply because the firms have been functioning at one place and simply because there was no board indicating at which place a particular firm is functioning, it cannot be said that there was a criminal conspiracy between respondents No.1 to 9. When it is found that the partnership firms were actually registered in accordance with the provisions of the Indian Partnership Act and when each partnership firm had separate telephone facility and separate Sales Tax numbers, it would go to indicate that the partnership firms were genuine and were functioning. Some other material is shown from the record that the partnership firms were not in existence. In fact, even if we find that a particular partnership firm may not have effective business at a particular time, it would depend upon the nature of business undertaken by each firm. Therefore, some firm may not be having work round the clock and all the days in a month and all the months in a year. However, when the sales tax numbers are there and when the partnership firms are registered, it cannot be said that prima facie the firms were non-existent.

11. It is then submitted that the bank had not maintained registers showing hypothecated goods and stock. The investigation undertaken by the petitioner goes to indicate that there was no practice in this particular branch for maintaining such registers showing hypothecated goods and since no such registers are maintained, it cannot be said that the first respondent had given special treatment extended to the other respondents by not maintaining such registers for these respondents only. It is a fact that such registers have not been maintained even with respect to other borrowers who had borrowed money from this Bank. If the management finds that there was some sort of negligence or lapse on the part of the Managers of the bank, then there is no difficulty on their part in taking appropriate departmental or other proceedings against this erring officers but nevertheless simply because the said registers have not been maintained, it cannot be said that non-maintenance of the said registers would amount to a part of criminal conspiracy between respondents No.1 to 9.

12. It has also been contended that the borrowers were required to prepare periodical returns to show status of their goods on hand at different point of time. It is submitted that the said returns have not been

submitted regularly by the contesting respondents to the Bank. Let us accept that these returns have not been sent in time but at the same time, simply because the returns are not sent in time, it may amount to irregularity committed by the contesting respondents. It may also amount to irregularity committed by the first respondent. It may be an act of negligence on the part of the officers of the bank concerned. But simply because the returns are not sent in time showing the status of goods/stock by respondents No.1 to 9, it would not prima facie lead to an inference that it was a part of criminal conspiracy between respondents no.1 to 9. There is no material to show as to whether there is a constant practice of this branch to receive periodical status of the stock from all the borrowers. It may be that the stock returns may not have been submitted by the borrowers regularly. In that case, it cannot be said that this action on the part of contesting respondents no.1 to 9 can be termed as part of criminal conspiracy between them. It is also not much in dispute that the contesting respondents have paid back the entire amount borrowed by them with interest and no amount is due to the bank by the said respondents at present. This shows that there could not be any element of criminal conspiracy between the contesting respondents. Had there been a matter of criminal conspiracy, the contesting respondents would not have paid up the entire amount with interest to the bank.

13. It appears that the borrowers have addressed letters showing that they have paid up the entire amount in full with interest to the bank. Letters in this regard addressed by the contesting respondents shall be taken on record. The fact that the entire amount has been paid up in full also shows that it could not be a case of criminal conspiracy between the contesting respondent.

14. It is next contended that the goods under hypothecation were not being placed separately from the goods not hypothecated with the bank. It is further submitted that there was no board showing that these particular goods were hypothecated with the bank. In fact, this aspect would not carry any importance when the amount in full has been paid up by the borrowers. Simply because the boards were not placed indicating that the goods were under bypothecation, it cannot be termed as part of criminal conspiracy between the contesting respondents no.1 to 9.

15. It is further contended that the area of

operation was not ascertainable and there is no mention about the same. This would hardly go to prove the element of criminal conspiracy between the respondents for committing the aforesaid offence. It would be seen that the first respondent remained in office as Branch Manager from 1.7.1989 to 20.4.1990. This aspect of the case also indicate that there is hardly any chance for a criminal conspiracy between the contesting respondents.

16. It is further contended that proper applications were not obtained for sanction of loan to the borrowers. It is revealed that such applications were received and they were processed before the loans were sanctioned. At the same time, equitable mortgage was also created in favour of the bank by the borrowers and there is no allegation that the said equitable mortgage was false or fabricated or ingenuine. This shows that they were genuine borrower and there is no allegation or prima facie evidence that even security tendered was bogus with a view to cheat or defraud the said Bank.

17. It is further argued by the contesting respondents that the entire goods under hypothecation was duly insured with a view to clear the dues of the said bank. This shows that there is no ingenuine, bogus or malafide action on the part of the respondents otherwise they would not have paid the premium for securing the said dues. If the dealings were not genuine, then the borrowers would not have any interest in the goods in question and, therefore, they would not have acted promptly for the security of the said goods. The fact that insurance was taken in respect of the entire goods under hypothecation, it would indicate that prima facie there was no case of criminal hypothecation to cheat the said bank. It is also found that so far as the offence under section 420 of IPC is concerned, there must be initial intention to cheat or defraud the bank. The above records and discussion disclose that there is no prima facie case of initial intention on the part of the contesting respondents to commit the said offence.

18. So far as the offence under the Prevention of Corruption Act is concerned, there is no further allegation as to who had committed the said offence and in what manner. Even if we take it that there was some lapse on the part of the first respondent in carrying out the administrative instructions, it cannot be said that he had taken some bribe or had committed certain acts which would amount to act of offences punishable under the Prevention of Corruption Act. Therefore, there is no material on record to allege the said offence. It is

true that there are so many witnesses mentioned in the charge sheet. It is true that more than 80 documents have been produced to be proved at the trial. However, the statements of witnesses and the contents of the documents, even taken on their face value, they do not lead us to prima facie believe that there is a prima facie case of criminal conspiracy for committing the aforesaid offence of cheating and other offence narrated in the charge sheet.

19. It was lastly contended that only one guarantor stood as guarantor for all the borrowers with respect to the entire amount. Now, if one guarantor is solvent enough to stand as surety for the entire dues, then there was nothing wrong on the part of the first respondent in permitting to do so. It is not revealed from the record that the said guarantor was a fake one, it is not revealed from the record that the said guarantor did not have any property. There is no material to show that the said guarantor did not have properties sufficient to meet with the amount borrowed by the contesting respondent. Therefore, the guarantor prima facie, cannot be treated to be bogus or ingenuine person.

20. It is also contended that the statements of accounts submitted to the bank by the contesting respondents were not duly signed by the borrowers. If some of those statements were not signed by the borrowers, it would amount to irregularity but it cannot be treated to be part of criminal conspiracy. It is more so when it is not revealed from the investigation that the statements of accounts submitted by the contesting respondents were not correct or genuine. There is nothing on record to show that the entries made in those statements of accounts were incorrect or did not contain true facts. Therefore, mere opinion to sign some of those papers could not be treated to be an act of criminal conspiracy.

21. It has also been contended that no pre-enquiry/investigation was made before the loans were sanctioned. The investigation reveals that enquiry and investigation were undertaken by one Govind Pandey. Therefore, the aforesaid allegation is also not supported by materials on record received through the said investigating officer. In view of the above position, it cannot be said that there was criminal conspiracy committed by respondent no.1 to 9 for committing the offences punishable under section 120-B read with sections 420, 471 of IPC and section 13(2) read with section 13(1)(d) of Prevention of Corruption of Act,

1988. If we go through some decisions cited by the learned Advocates for the parties, it would be relevant to consider the decision of Bipin Shantilal Panchal v. Prithviraj, reported in 1999 Cri.L.J. 214. It is observed in it that when prima facie evidence showed criminal conspiracy in committing the alleged offence under NDPS Act, it was sufficient ground to proceed against the accused persons irrespective of probative value of such materials. It is true that the materials on record cannot be weighed at the stage of framing of charge. The court has to take the materials on record as they stand at that stage and if ultimately it is found that the materials are not sufficient to convict an accused, then the accused can be acquitted. But on the ground of insufficiency of evidence, the accused cannot be discharged. There cannot be any dispute about the same. In the present case before us, there is absolutely no material to prima facie show that there was criminal conspiracy between respondent no.1 and 2 to 9 for committing the aforesaid offences and, therefore, the above decision cannot be applied on the facts of this case.

21.1. Another decision cited by the learned Advocate for the petitioner is in the case of State of M.P. v. S.B. Johari & ors, reported in (2000) 2 SCC 57. There the Hon'ble Supreme Court clearly observed that exercise of appreciating the material produced by the prosecution at the time of framing of charge is wholly unjustified. As said above, the material on record is not required to be scrutinised, appreciated or weighed at the time of framing of charge. Even from the materials produced before the court, if it was found that the accused cannot be treated to have committed the offence prima facie, in that event, the charge cannot be framed.

21.2. In the case of Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, reported in (1989) 1 SCC 715, it has been observed that when trial court, finding a prima facie case, was required to frame charge against the accused, the High Court should not interfere by probing into sufficiency of grounds for conviction of the accused. As said above, sufficiency of evidence cannot be gone into at the time of framing of charge. If there are prima facie grounds to proceed ahead, the Court can go ahead. But in the present case, there is nothing on record to show that there are grounds to proceed against the respondents.

21.3. In the case of Hardeo Singh v. State of Bihar, reported in 2000(4) SC 261 also the petition was for

discharge of the accused was rejected and the Court found that the High Court was right in refusing to quash the charge sheet. The allegation in that case was that the accused got sanctioned from Manager of Bank over draft facilities and gained wrongful gains. However, on fact it was found that there was material against the persons accused in question. There the Supreme Court upheld the decision of the High Court. This decision does not apply on the facts of the case before us. In the case before us, the investigating papers do not reveal even prima facie case against the contesting respondents. The materials do not indicate that there are grounds to proceed against these respondents. In that view of the matter, the learned Special Judge has not committed any illegality in discharging the contesting respondents. The learned Judge has actually not weighed or scrutinised the evidence and it cannot be said that he appreciated the evidence.

22. It is true that he has referred in his order that there is no sufficient evidence to show that there was criminal conspiracy between the parties. He has also observed in the judgment that there is no evidence to prove the criminal conspiracy. It appears that the learned Judge observed that there is no direct evidence for the offence of criminal conspiracy. However, on going through his entire order, it can be gathered that he really meant to convey that there was a total absence of direct/circumstantial evidence to go ahead with trial against the contesting respondents. In that view of the matter, the judgment and order of the learned Special Judge cannot be said to be illegal or perverse.

23. It is also contended that there cannot be any direct evidence with respect to criminal conspiracy. Nevertheless, it is found that there is no direct or indirect evidence. There can be circumstantial evidence to show prima facie criminal conspiracy. If there is no material on record or if there is no adverse circumstance against the contesting respondents, it cannot be said that there is a case of criminal conspiracy. Simply because the prosecution has alleged that there is criminal conspiracy, it cannot be treated as such. The prosecution has to place some material before the court in order to show a prima facie case of criminal conspiracy. In the case before us, there is no prima facie case against the respondents to proceed against them. There is no ground to proceed against them. In that view of the matter, the contesting respondents cannot be asked to face trial and get acquittal.

24. For the foregoing reasons, I am of the opinion that the judgment and order of the learned trial Judge cannot be said to be illegal and perverse. This being a criminal revision, the revisional powers are very limited. This Court cannot exercise powers exercisable by a Court of appeal. In that view of the matter, when there is no ground to proceed against the contesting respondent, the learned Judge was perfectly justified in discharging the contesting respondents. There appears to be no illegality committed by him and, therefore, the judgment and order discharging the contesting respondents cannot be treated to be illegal and perverse, meaning thereby, it cannot be said that the order is based on no ground or no material. It cannot be said that some materials have been overlooked or not considered. It cannot be said that some part of the evidence was overlooked. In that view of the matter, there is no merit in this revision and consequently it deserves to be dismissed.

This revision application is ordered to be dismissed. Rule discharged.

18.1.2002 [D P Buch, J.]

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